UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,803	12/05/2003	Vikas Agarwal	JP920030194US1	2259

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EXAMINER
OBEID, FAHD A

ART UNIT	PAPER NUMBER
3627	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/729,803	AGARWAL ET AL.
	Examiner	Art Unit
	FAHD A. OBEID	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 April 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-12 and 14-17* is/are pending in the application.

    4a) Of the above claim(s) *11,12 and 14-17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of the Application

1.   This is in reply to application filed on 04/06/2009.

2.   Claims 1, 3-12, and 14-17 are pending.

3.   No claims have been added or canceled.

4.   Claims 2, 13, and 18-21 remain canceled.

5.   Claim 1 has been amended.

6.   Claims 11-12 and 14-17 remain withdrawn as been drawn to nonelected invention.

7.   Claims 1 and 3-10 are currently pending and have been examined.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

9.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

        1.   Determining the scope and contents of the prior art.
        2.   Ascertaining the differences between the prior art and the claims at issue.
        3.   Resolving the level of ordinary skill in the pertinent art.
        4.   Considering objective evidence present in the application indicating obviousness
                or nonobviousness.

10.   This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11.   Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Halliday (US 2002/0083003) in view of Deliwala (US 2004/0210496).

Halliday et al. shows all of the limitations of the claims except for specifying allocating

the recorded monitoring information.

Halliday et al. shows, figure 4, a system for accurate time and usage based metering of

client application or client application feature usage and the reporting of said usage to a site on a

public network.

From page 3, second column: A basic overview of operation of the present invention is as

follows: A user will first create an account with the central billing site 1J and add some credit to

his account using well known financial on site or remote transaction facilities and methods.

The user will then load from a data storage medium (such as a magnetic disk or tape,

optical disk including CD ROM and DVD, electronic storage media including ROM-card and

RAM-card, or any other suitable data storage means), or download from a proprietor's website to

his local computer, one or more specially configured software packages. (Downloaded software

is a network-accessible computer resource) These packages may include, in addition to the client

application, an application library having metering means for developing and communicating

usage information to an also included metering monitor. An included login tool provides an

interactive front end to the metering monitor and enables the user to logon to the remote

metering system. The logon process will map the local user on the client computer to an account

held in the remote database, and such account will be charged as usage of an application is

accumulated (process accounting information for use of computing resources). Once

logged on, any applications running as a local user will be charged to the remote account. The

metering monitor software on the client computer is responsible for accepting usage information

from a client application and forwarding that information to the central billing server. Further,

the metering monitor is operative to track application exits and to close charging sessions for

applications that exit spuriously. In an alternative embodiment of the present invention, the

metering monitor may also act as a proxy server, accumulating metering information and

forwarding the information as a batch to the central server at periodic intervals set by the server.

This is intended to minimize the amount of time the client computer needs to be in contact with

its metering server.

Figure 5 and paragraph 0071 shows one embodiment of a metering monitor 4A that can

monitor a plurality of client applications 4C that may be started by many different users on the

same client computer 1A (service requests being from different users).

Applications (service request) are executed. As the applications execute vendor code calls

to the client library to indicate that features are in use, the library will forward this information to

the metering monitor. The metering monitor (recording) will then associate this application with

a server account via the map of logged-in users and forward the information to the metering

server.

On the metering server, usage reports are compared to a tariff sheet for the user and the

account credit value is reduced by an amount as determined by the rate (proportion, relative

weight, weighted manner) and length of use of a feature.

Alternatively, charges could be accumulated and billed to the user. While the system of the

present invention retroactively accumulates and charges for features used, facilities are included

to prevent misuse of the system. These facilities include: means for disabling the client

applications if usage information does not reach the metering server on a periodic basis, and each

communication with the server adds several metrics to help determine if the user is trying to

circumvent the system. The metrics may include but are not limited to: transmission times, local

times, CPU usage, memory usage and user information.

Page 5, paragraph [0077] shows overlapping requests, includes active lists, it then checks

at 9B for the existence of another metering monitor running on the same the client computer

using the same the configuration file. If such a metering monitor exists, the newly started

monitor quits.

From Webster's Dictionary, allocate can mean to set apart or earmark.

Multiple clients are using vendor code (a computing resource), which means that vendor

code has been set apart for their use or vendor code is being allocated for each client. Because

the system has a means for disabling the code, it can refuse to allocate resource usage. The

overlapping request is addressed above.

The system uses a pool of features in order to provide an application. A feature is an atomic chargeable unit of functionality. It is in this way the overlapping usage or features used in more than one application can be allocated for different applications or service requests.

Deliwala teaches a method of tracking costs incurred by an organization, identifying the consumption of raw technology resources by the organization, the organizational information includes groups in which the entity is divided as well as sub-groups for further subdivision of the business (paras 9 & 10); determining costs used by each group or department, for example an engineering group may have several different sub groups, one for each particular job being performed by the engineering group (para 15); a provider of utility priced computing services typically prices its services based on processor usage time, for example, on a CPU-second basis (para 16); Deliwala's system and method further reads a "business model" file that contains data as to how the business that incurred the costs is organized, the raw data is then grouped according to the business model, therefore the data is sorted according to the internal organization of the organization (para 18); determining exactly how much computing time was used by each group and subgroup "allocating overlapping usage of the computer resources between at least two overlapping service requests" within the organization using the "business model" (para 23); allocating the billing information using the "business model" which comprises various business dimension within the organization (claim 1).

Based on the teaching of Deliwala et al., it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the Halliday system to incorporate the allocating method of the Deliwala et al. system in order to provide an efficient means for allocating resources and for charging customer for the allocated resources.

Response to Arguments

12.   Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FAHD A. OBEID whose telephone number is (571)270-3324. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fahd A Obeid/
Examiner, Art Unit 3627
June 13, 2009

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627